

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LLOIS B. COPELAN, a single
individual,

Plaintiff,

-vs-

FERRY COUNTY, a County in the
State of Washington, PETE WARNER
and JANE DOE WARNER,
individually and the marital
community composed thereof,
DEANNA DEVAUL, and JOHN DOE
DEVAUL, individually and the
marital community composed
thereof, BUD KNOWLES and JANE
DOE KNOWLES, individually and
the marital community composed
thereof, and JOHN DOES I-X,

Defendants.

NO. CV-06-0303-LRS

**ORDER DENYING PLAINTIFF'S
MOTION FOR REMAND TO OKANOGAN
COUNTY SUPERIOR COURT**

Before the court is Plaintiff's Motion to Remand (Ct. Rec. 4)¹, filed November 9, 2006, and noted without oral argument. Plaintiff requests that this action be remanded to the Okanogan County Superior.

I. BACKGROUND

Plaintiff served a Complaint for Damages on Defendants in Okanogan County Superior Court on October 6, 2006. The Complaint raises tort claims under Washington state law related to allegations

¹Plaintiff also incorporates Plaintiff's Objection to Notice of Removal (Ct. Rec. 3) into her Motion For Remand.

1 of improper impoundment of Plaintiff's cattle under Washington State
2 Open Range Laws. The other claim arises under 42 U.S.C. §1983.

3 On November 1, 2006, Defendants filed a timely "Notice Federal
4 Removal" to the United States District Court for the Eastern District
5 of Washington. Pursuant to 28 U.S.C. § 1446, Defendants removed the
6 case to federal court on the ground that the Complaint includes both
7 state law claims and a claim under 42 U.S.C. § 1983. Ct. Rec. 1.
8 Defendants assert that removal of the action is proper based on
9 Plaintiff's civil rights claim. Ct. Rec. 1 at 2.

10 Plaintiff objects to the removal and moves for remand to Okanogan
11 County Superior Court. Plaintiff argues this case is predominantly
12 grounded in state law tort and the Washington State Open Range laws
13 which state courts are better equipped to handle. Plaintiff
14 additionally argues that the removal was intended to harass, delay
15 and increase the expense of litigation to Plaintiff's detriment. In
16 support of her argument, Plaintiff informs that all or most of the
17 witnesses are located on Okanogan County.

18 II. DISCUSSION

19 A. Legal Standard

20 When a case is removed from state court, a district court must
21 remand the case if it determines that it lacks subject matter
22 jurisdiction. See 28 U.S.C. §1447(c). There is a "strong
23 presumption" against removal, *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
24 (9th Cir.1992), and any uncertainties are to be resolved in favor of
25 remand, see *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393
26 (9th Cir. 1988). Defendants bear the burden of proving, by a

preponderance of evidence, actual facts sufficient to support jurisdiction. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996). If the complaint does not already disclose a sufficient basis for jurisdiction, such facts must appear in the notice of removal. *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 191 (9th Cir. 1983). Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). "Because removal jurisdiction raises significant federalism concerns, [courts] must strictly construe removal jurisdiction." *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994) (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 61 S.Ct. 868, 85 L.Ed. 1214, (1941)).

B. Jurisdiction

United States District Courts are courts of limited jurisdiction. Under 28 U.S.C. §1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States. . . ." 28 U.S.C. §1441(a). Because §1441 allows removal of actions only within the federal court's original jurisdiction, the first question for consideration is whether this court has original jurisdiction.

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1 Defendants base the removal of this action on 28 U.S.C. §1441(a)². Ct.
2 Rec. 1. Under 28 U.S.C. § 1441(a), the removal statute, any civil
3 action "of which the district courts have original jurisdiction
4 founded on a claim or right arising under the Constitution, treaties
5 or laws of the United States shall be removable without regard to the
6 citizenship or residence of the parties." So the question becomes
7 whether the action as originally brought would have been within the
8 District Court's federal-question jurisdiction, see 28 U.S.C. § 1331,
9 if it had been filed in a federal district court in the first place.

10 Plaintiff asserts that although the court does have original
11 jurisdiction over the 42 U.S.C. § 1983 claim pleaded and alleged in
12 her complaint, state courts handle civil rights claims on a routine
13 basis. Ct. Rec. 7, at 2. Plaintiff also argues that this type of
14 case hardly warrants the attention of the federal courts. *Id.* at 4.
15 Plaintiff states she is seeking judgment against Defendants for an
16 insignificant amount compared to the anticipated costs of discovery in
17 federal court. *Id.* at 3-4.

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20 ²(b) Any civil action of which the district courts have original
21 jurisdiction founded on a claim or right arising under the Constitution,
22 treaties or laws of the United States shall be removable without regard
23 to the citizenship or residence of the parties. Any other such action
24 shall be removable only if none of the parties in interest properly
25 joined and served as defendants is a citizen of the State in which such
26 action is brought. 28 U.S.C. § 1441(b).

1 The court agrees with Defendants that the civil rights claim in
2 the well-pleaded Complaint can serve as the basis for a district
3 court's "arising under" jurisdiction.³ Defendants properly argue that
4 28 U.S.C. §1441(c) provides that whenever a separate or independent
5 claim within the jurisdiction conferred by § 1331 is joined with one
6 or more otherwise non-removable claims, the entire case may be removed
7 and the district court may determine all issues therein ... " Ct. Rec.
8 6, at 4-5. Because federal district court's have original
9 jurisdiction over claims brought pursuant to § 1983, the case was
10 properly removed to federal court upon Defendant's motion. See 28
11 U.S.C. § 1441(a) (authorizing removal of "any civil action brought in
12 a State court of which the district courts of the United States have
13 original jurisdiction"); 28 U.S.C. § 1331 (granting district courts
14 original jurisdiction over "all civil actions arising under the
15 Constitution, laws, or treaties of the United States").

16 Moreover, although this Court has discretion to decline the
17 exercise of supplemental jurisdiction over Plaintiff's remaining
18 claims brought under Washington state law, the exercise of
19 supplemental jurisdiction in this case is proper. See 28 U.S.C. §
20 1367(a), (c). Plaintiff's § 1983 claim and state claims derive from
21 the same set of facts, namely the alleged improper cattle impoundment
22 by Defendants. See *Brady v. Brown*, 51 F.3d 810, 816 (9th Cir. 1995).
23 Further, Plaintiff's federal claim does not predominate over her state

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25 ³Section 1331 states: "The district courts shall have original
26 jurisdiction of all civil actions arising under the Constitution, laws,
or treaties of the United States. 28 U.S.C. §1331.

1 claims and the goals of judicial economy, convenience, fairness, and
2 comity would be served by the exercise of supplemental jurisdiction.
3 See 28 U.S.C. § 1367(c)(2).

4 Plaintiff's objection maintains remand to state court is
5 necessary to promote judicial economy and the conservation of judicial
6 resources. In support of this contention, Plaintiff notes the state
7 courts are quite familiar with Washington open range laws. Plaintiff
8 also points to suits filed in state court by Plaintiff's counsel in
9 which 42 U.S.C. §1983 claims were handled in state courts. The mere
10 fact of the state court's familiarity with cattle laws and §1983
11 claims does not counsel remand to state court. This Court is
12 competent to familiarize itself with the relevant facts of this case
13 as they come to light in the proceedings.

14 The foregoing notwithstanding, the Court notes that the dispute
15 giving rise to this suit apparently involves 13 cattle which were
16 impounded and hauled to Davenport, Washington. Plaintiff's concerns
17 about costs and inconvenience are not without merit. The parties are
18 reminded that alternate dispute resolution is encouraged when
19 appropriate.

20 **III. CONCLUSION**

21 The Court finds that Defendants complied with 28 U.S.C. §1441.
22 The Court concludes it may exercise jurisdiction under § 1441 because
23 there is indication from the pleadings that the state action contains
24 a claim arising under a federal law. In light of the above, this
25 Court has jurisdiction over this matter and it shall not be remanded
26 to Okanogan County Superior Court. Given the limited nature of this

1 ruling and the lack of a developed factual record, no opinion is
2 expressed herewith concerning either the merits of Plaintiff's claims
3 or the defenses which may be available to the Defendants. Accordingly,

4 **IT IS ORDERED** that:

5 1. Plaintiff's Motion For Remand to Okanogan County Superior
6 Court, Ct. Rec. 4, filed November 9, 2006 is **DENIED**.

7 The District Court Executive is directed to file this Order and
8 provide copies to counsel of record.

9 **DATED** this 8th day of December, 2006.

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11 ***s/Lonny R. Suko***

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13 LONNY R. SUKO
14 UNITED STATES DISTRICT JUDGE
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